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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 597

ROBERT J. McKNETT, Petitioner,

vs.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY,

Respondent.

PETITION FOR REHEARING

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Now comes the above-named respondent, St. Louis & San Francisco Railway Company, a Corporation, and presents this, its petition for a rehearing of the above-entitled cause, and in support thereof shows:

1. The opinion states that "The plaintiff, McKnett, is a resident of Tennessee." The record does not bear out this statement. From aught appearing from the record McKnett is not a resident of Tennessee, and is not even a citizen of the United States. If the opinion attempts in part to base McKnett's right to sue in the Alabama Courts upon the privileges and

immunities clause (Art. IV, Sec. 2), it is not supported by the record.

2. The opinion admits that "prior to the Act of 1907, it had been consistently held . . . . that no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action had arisen within the State," and further admits that "despite the 1907 Act, lack of jurisdiction still existed in respect to causes of action arising in another state under the federal law; . . . ". Notwithstanding this admission that by Alabama law the Alabama court did not have jurisdiction of a cause of action arising in Tennessee under Federal law against a foreign corporation either before or after the 1907 Act, the Court erroneously concludes that "the ordinary jurisdiction of the Alabama circuit court is appropriate to enforce the right against this defendant (a foreign corporation, we add) conferred upon the plaintiff by the Federal Employers' Liability Act," (and arising in Tennessee). This conclusion is drawn from the Court's statement that the Alabama circuit court is a court of general jurisdiction, would have had jurisdiction if the accident had occurred in Alabama, or, although the accident occurred in Tennessee, if defendant had been a domestic corporation, or, although defendant was a foreign corporation, if the injury had been suffered in intrastate commerce. But to conclude from these facts that the Alabama court had jurisdiction of this cause of action is a clear **non sequitur** and is inescapably opposed to the Court's earlier admission that prior to the 1907 Act the Alabama court did not have jurisdiction, and that jurisdiction over this particular cause of action was not

conferred by the 1907 Act. The Alabama circuit courts were courts of general jurisdiction prior to the 1907 Act, but they did not, by reason of such fact, have jurisdiction over a cause of action arising in Tennessee against a foreign corporation. Jurisdiction over this cause of action, arising in Tennessee against a foreign corporation, was not conferred by the 1907 Act, and since, as the opinon says, "Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act," it is necessarily true that the Alabama court did not have jurisdiction of this cause of action, and Congress has not attempted to compel it to take jurisdiction.

3. The judgment is reversed because, it is said, the Alabama court is discriminating against a claimant under a federal act. But the discrimination results, not from the Alabama court's decision, but from the 1907 Act, for the Act conferred jurisdiction over causes of action arising in other states under the laws of such states against foreign corporations, and did not confer jurisdiction when the cause arose under Federal law. Since the Court concludes that the discrimination is unwarranted, and since the 1907 Act, and it alone, created the discrimination, it follows that the Act is unconstitutional. As the Alabama court does not have jurisdiction either under the Act or in the absence of the Act, we respectfully submit that the judgment should be affirmed. If the Court prefers to reverse the case in order to permit the Alabama court the opportunity to again construe the 1907 Act in the light of the present opinion, we respectfully request the Court to state that the Act, as construed, is discriminatory and unconstitutional,

rather than to do, by this opinion, that which Congress has not attempted to do, namely, compel the Alabama court to take jurisdiction of this action where jurisdiction, under Alabama law, does not exist. For the result of present opinion is to treat the 1907 Act as constitutional, basing the discrimination on the Alabama court's decision rather than on the Act, and compelling the Alabama court to take jurisdiction of this action, although jurisdiction of the Alabama court did not exist prior to the 1907 Act, and was not conferred by the Act.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judgment of the Supreme Court of Alabama be, upon further consideration, affirmed.

LUCIEN D. GARDNER, JR.,
Counsel for Respondent.

I, the undersigned, counsel for the above named respondent, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

LUCIEN D. GARDNER, JR.,
Counsel for Respondent.